

West Bengal Real Estate Regulatory Authority  
 Calcutta Greens Commercial Complex (1st Floor)  
 1050/2, Survey Park, Kolkata- 700 075

Complaint No.WBRERA/COM000800

Bhadra Technocrates Private Limited..... Complainant

Vs

Dream Gateway Hotels Ltd..... Respondent

Sl. Number and date of order	Order and signature of the Authority	Note of action taken on order
01 20.09.2024	<p>Advocate Sadaf Aafrin (Mob. No. 9903432306 and email - sadafaafrin661@gmail.com) and Advocate Javed K Sanwarwala (Mob. No. 9831035405) are present in the physical hearing on behalf of the Complainant filing Vakalatnama and signed the Attendance Sheet.</p> <p>Advocate Smt. Bidisha Banerjee (Mobile - 9007936874 &amp; email Id: bbanerjee2891@gmail.com) and Mr. Suvankar Dam (Mob. No. 9903788200), Senior Legal Executive of the Respondent Company are present in the physical hearing filing Vakalatnama/Authorization and signed the Attendance Sheet.</p> <p>Heard both the parties in detail.</p> <p>As per the Complaint Petition the fact of case is that -</p> <p>A. That the complainant Bhadra Technocrates Pvt. Ltd., a company incorporated under the provision of Companies Act, 2013 represented by its Managing Director, Sri. Pranoy Bhadra, hereinafter referred as Complainant is a bonafide allottee whose rights, as protected under the Real Estate (Regulatory &amp; Development) Act, 2016 have been violated.</p> <p>B. That Dream Gateway Hotels Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 44/2A, Hazra Road, Kolkata - 19 hereinafter referred to as the respondent represented by its authorized signatory, Sri. Gyan Prakash Shah, approached the Complainant in the beginning of the year 2015 for the purchase of the two flats in their real estate project named '<b>Dream One</b>' at Mouzas Kadampur, Police Station - Rajarhat, District - 24 Pgs. (North).</p> <p>C. That the Complainant showed interest buying two residential flats and accordingly the complainant booked one flat being flat no. 5A1 containing 1080 sq.ft., super built-up area on the 5<sup>th</sup> floor with a car parking space in the basement and another flat no. 5A2</p>	

containing 1240 sq.ft. super built-up area on the 5<sup>th</sup> floor area with servant quarter and a car parking space in the basement, both in Tower 3, in the month of July, 2015.

- D. That two several Agreements for Sale between the complainant and the respondent were executed on 14.08.2015 in respect of the aforesaid two flats allotting both the flats to the complainant. As per the Agreement for Sale the total consideration for Flat No. 5A1 was agreed at Rs.68,21,662/- and for Flat No. 5A2 it was agreed at Rs.78,16,289/- inclusive of service tax and deposits respectively.
- E. That the complainant paid a total advance sale consideration of Rs.52,01,014/-for Flat No. 5A1 and Rs.58,77,595/-for Flat No. 5A2. The complainant is now only liable to pay the balance consideration of Rs.16,20,648/-for flat No. 5A1 and Rs.19,38,694/-for Flat No. 5A2 with the delivery of possession and execution and registration of final conveyances in respect of both the above mentioned two flats.
- F. That as per the aforesaid agreements the respondent was bound and obliged to deliver the possession of the above-mentioned two flats within 60 months including the grace period of six months from the day of the commencement of construction i.e. December, 2015 as per mail dt. 15.09.2015, but despite entering into a contract in the year 2013 the respondent did not even start construction of Tower 3 till May, 2018. The complainant could ascertain that the project would be grossly delayed and the respondent would not be able to deliver possession of the two flats within the time frame even from the date of commencement of construction of the said Tower 3 and consequently the complainant questioned the respondent about the inordinate delay and in the absence of any satisfactory reply from its end the complainant was compelled to stop payment of further installments.
- G. That several meetings were held between the complainant and the respondent wherein they themselves accepted that the respondent deliberately did not start the construction of Tower 3 due to slow-down in the real estate market. The respondent further stated that in companies to smaller flats there were only a few takers of bigger flats and without selling the bigger flats they would not be able to finish the project in its entirety within time. The respondent offered my client to surrender the small two flats in Tower 3 and book one big flat in Tower 1 at the same rate if it wishes to expedite the development project and continue to lure the complainant into taking bigger flat in tower one in exchange of the above-mentioned two flats in Tower 3 and my client bund the offer reasonable as the rates were not being increased and consequently my client asked the respondent to send a detailed proposal about the new flat. The respondent then emailed a detailed proposal of flat no. 4C in Tower One containing 2490 sq.ft. at a basic rate of Rs.4849/-per sq.ft. dated 16.03.2019. The complainant accepted the above proposal

dubitably and reluctantly vide his e-mail dated 18.03.2019 on two conditions. Firstly, that the rates and the terms remain the same as per agreement dated 14.08.2015 and the interest part on the late payment also need to be deleted as per agreement be made by the respondents in respect of Flat No. 4C in Tower 1.

H. That the respondent did not comply with any of the aforesaid conditions set by the complainant in respect of the new agreement regarding Flat No. 4C Tower 1. The respondent also calculated the consideration of the new flat at the rate of Rs.5170/- per sq.ft., which was much higher compared to the rates in respect of the two flats in the old agreements as well as the rate mentioned in the mail dated 16.03.2019. The GST rates also did not match. The complainant in an email dated 24.05.2019 pointed out to the respondent all the anomalies and mismatch in the agreed proposal and the agreement and in an unambiguous manner informed the respondent that they could not comply with the exchange proposal as the complainant is not liable to pay the higher rate and further that it has exceeded its budget. The respondent did not reply to the email dated 24.05.2019 and the complainant was under the impression that since there was no reply from the respondent the respondent has discontinued the process of Flat No. 1 4C in Tower 1 and that the respondent would deliver the Flat No. 5A1 and Flat No. 5A2 in Tower 3 as per the old agreement dated 14.08.2015.

I. That immediately after this the entire world was engulfed by corona virus pandemic, in the meantime the complainant can now expect the delivery of the two flats i.e., Flat No. 5A1 and 5A2 in Tower 3 in the December of 2022. However, even after the pandemic the respondent made no attempt to get in the complainant so vide an e-mail dated 18.11.2022 the complainant enquired about the delivery of possession of the two flats and about reconciliation of accounts.

J. That the complainant was shocked at the reply made by the respondents. The respondents in their email dated 22.11.2022 stated that the booking of the above mentioned two flat Nos. 5A1 and 5A2 in Tower 3 have been cancelled on 04.04.2019 and Flat No. 4C in Tower 1 has been booked in the name of the complainant. The complainant in their reply dated 29.11.2022 confronted the respondents stating that the respondent had no right to unilaterally cancel the bookings of Flat No. 5A1 and Flat No. 5A2 in Tower 3 without giving any notice to the complainant especially since they had accepted a further payment of Rs.30,00,000/- on 22.03.2019 in respect of the two flats and on repeated requests did not give any money receipt to the complainant towards such payment.

K. The respondent vide another e-mail dated 05.01.2023 stated that the complainant would be shifted back to their original booking of Flat Nos. 5A1 and 5A2 in Tower 3 if they clear all dues stated to be

Rs.12,51,389/- against Flat No. 5A1 and Rs.70,88,696/-against flat No. 5A2 including penal interest. This was nothing but only an attempt to squeeze more money out of the complainant in as much with the aforesaid payment the total consideration of the two flats would have gone up astronomically to the extent of double of the original sale consideration.

- L. So long the complainant was transacting business with the officers and employees of the respondent but at this juncture the complainant took up the matter with the management of the respondent and after repeated persuasion from the complainant on 15.05.2023 where once again the respondent attempted to trick the complainant by offering two commercial studio flats in lieu of the two flat Nos. 5A1 and 5A2 or flat No. 4C without any paper or document.
- M. The complainant was already frustrated with the delay in delivery of possession of his originally booked two flats and the continued ploy of the respondent for squeezing more money from him and as such he agreed to consider fresh proposal of the respondent. However, to utter dismay of the complainant the respondent again issued an email dated 18.05.2023 contending therein that as per the meeting held on 15.05.2023 the booking of flat 4C in Tower 1 has been cancelled two studio flats have been booked in the name of complainant and that all the funds paid by the complainant till date in respect of the two flats being Flat Nos. 5A1 and 5A2 in Tower 3 have been transferred against the studio flats. Once again, the respondent took advantage of their own wrong by cancelling the original booking and making a new booking on behalf of the complainant without cancelling the previous agreements or without executing fresh agreements. The complainant vide his email dated 05.06.2023 asked the respondent to put everything on hold until the respondent provides the complainant with all the information and documents including the floor plan, the parking details and Govt. sanction details and 2/3<sup>rd</sup> flat owners agreeing to commercial development in the same premises and only proceed after the complainant is satisfied in all respect.
- N. The devil was in the detail and the complainant came to know that there was no commercial sanction for studio flats and no car parking was provided. The respondent also failed to produce the consent of the 2/3<sup>rd</sup> flat owners agreeing to such commercial development.
- O. The complainant was shocked and aghast with the deceitful tricks of the respondent and decided not to enter into any further discussion with the respondent and demanded to deliver the originally booked flat Nos. 5A1 and 5A2 in accordance with the terms and conditions of the said agreements dated 14.08.2015 and register the conveyance (s) in respect thereof on receipt of the balance consideration. The complainant has already discharged all

his financial obligations. There cannot be any allegations for non-payment of delayed payment especially after the payment made on 22.03.2019 when the respondent accepted Rs.30,00,000/-without any protest or demur.

P. The respondent had no right to unilaterally cancel the agreement for sale dated 14.08.2015 against Flat No. 4C in Tower 1 especially after accepting the payment on 22.03.2019. the respondents further did not have the right to cancel the agreement for flats 5A1 and 5A2 without execution of a fresh agreement flat 4C and again cancel the agreement for 4C, Tower 1 in lieu of the two studio flats which was never even confirmed by the complainant.

Q. It is very clear that the respondent never intended to even begin construction of Tower 3 much less deliver possession of the two flats. The respondent has time and again tried to confuse the complainant by constantly cancelling and booking flats to squeeze as much money from the complainant as they can. The complainant however was still willing to perform his part of the obligation of paying the balance consideration at the time of delivery of possession of the two original flat Nos. 5A1 and 5A2 booked in the name of the complainant on the 5<sup>th</sup> floor in Tower 3 and simultaneously executing and registering the conveyance in favour of the complainant.

R. That the respondent is guilty of deficiency of service and unfair trade practice by not delivering the possession of Flat No. 5A1 and Flat No. 5A2 (5<sup>th</sup> floor of Tower-3) to the complainant and not registering a proper conveyance in favour of the complainant at the cost of the complainant against receipt of balance consideration.

S. That despite several telephonic reminders and communications through e-mail the respondent continues to delay in handing over the possession of the two flats to the complainant and has been putting the matter off, on one pretext or the other. The complainant has now lost all hope of ever receiving the possession of the flats 5A1 and 5A2 on the 5<sup>th</sup> floor in Tower 3.

T. Finding no other alternative, the complainant caused to issue a legal notice through its Ld. Advocate vide notice dated 04.12.2023 regarding the inordinate delay of possession and execution and registration of final conveyance of flat 5A1 and 5A2 and also exposing the criminal conspiracy of the respondents and demanding that the respondent deliver everything that they had originally promised to the complaint. The respondent did not reply to the above mentioned notice and have been silent ever since.

**The Complainant prays before the Authority for the following relief(s):-**

A. That the respondent be directed to deliver the possession of the above referred two flats being flat No. 5A1 and 5A2 (5<sup>th</sup> floor in

Tower 3) complete in its entirety against payment of the entire balance consideration and simultaneously execute and register the final deed of conveyance in respect of the aforesaid two flats in favour of the complainant or receipt of the balance consideration of Rs.16,20,648/-for Flat No. 5A1 and Rs.19,38,694/- for Flat No. 5A2 while paying an interest of 6% p.a. for delay in delivery of possession of the aforesaid flats; and

- B. **Alternatively**, the Respondent be directed to return or refund of Rs.52,01,014/-together with interest @18% p.a. from the date of payment till recovery in respect of flat No. 5A1 in Tower 3 and Rs.58,77,595/-together with interest @18% p.a. from the date of payment till recovery in respect of flat No. 5A2 in Tower 3; and
- C. That the respondents be directed to pay a sum of Rs.5,00,000/-to the complainants towards compensation for loss, injury, hardships, mental torture and mental agony suffered by them; and
- D. That the respondents be further directed to pay a sum of Rs.10,000/-to the complainants towards cost of litigation; and
- E. Such further order or orders be passed as this Authority may deem fit and proper.

**The Complainant prays before the Authority for the following interim relief:-**

The Respondent be restrained from transferring or alienating or parting with title or possession of flat no.5A1 and flat no.5A2 on the 5<sup>th</sup> floor of tower 3 of the subject matter project until disposal of the instant complaint.

After hearing both the parties, the Authority is pleased to admit this matter for further hearing and order as per the provisions contained in Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 and give the following directions:-

The **Complainant** is directed to submit its total submission regarding its Complaint Petition on a Notarized Affidavit annexing therewith notary attested /self-attested copy of supporting documents and a signed copy of the Complaint Petition and send the Affidavit (in original) to the Authority serving a copy of the same to the Respondent, both in hard and scan copies, within **21 (Twenty-One)** days from the date of receipt of this order of the Authority by email.

The Complainant is further directed to send a scan copy of its Affidavit alongwith annexure to the email Id of the Advocate of the Respondent, as mentioned above.

The Complainant is further directed to provide in a Tabular Form

chronologically all the payments made by it specifying date, amount and money receipt number, if any, in the said table in its Affidavit.

The **Respondent** is hereby directed to submit their Written Response on notarized affidavit regarding the Complaint Petition and Affidavit of the Complainant, annexing therewith notary attested/self-attested copy of supporting documents, if any, and send the Affidavit (in original) to the Authority serving a copy of the same to the Complainant, both in hard and scan copies, within **21 (Twenty-One)** days from the date of receipt of the Affidavit of the Complainant either by post or by email whichever is earlier.

In spite of the above directions, both the parties shall be at liberty to take initiative and try for an amicable settlement of the issues between them by mutual discussions and if they arrive at a mutual settlement, they shall submit a **Joint Affidavit**, signed by both, containing the terms and conditions of the mutual settlement, and send the Affidavit (in original) to the Authority before the next date of hearing and in that case there is no need of submitting separate affidavit(s) by Complainant and Respondent, as per the directions given above.

Respondent shall not transfer/alienate/part with any of the title, right and/or interest in respect to the flat no.5A1 and 5A2 in the 5<sup>th</sup> floor of the project '**Dream One**' until further order or until disposal of this matter, whichever is earlier.

Fix **10.12.2024** for further hearing and order.

Sd/-  
(BHOLANATH DAS)  
Member

West Bengal Real Estate Regulatory Authority

certified to be true copy.

lke  
20-07-2024

Special Law Officer  
West Bengal Real Estate Regulatory Authority